

**TOWN OF DAVIE  
SPECIAL MEETING  
MARCH 22, 2004**

The meeting was called to order at 5:50 p.m. Present at the meeting were Mayor Truex, Vice-Mayor Paul, and Councilmembers Crowley, Hubert and Starkey (arrived 6:02 p.m.). Also present were Town Administrator Willi, Town Attorney Kiar, and Town Clerk Muniz recording the meeting.

1. A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, CANCELLING THE TOWING FRANCHISE WITH BOB'S TOWING, INC. AND AUTHORIZING THE TOWN ADMINISTRATOR OR HIS DESIGNEE TO NEGOTIATE AN AGREEMENT WITH THE NEXT HIGHEST RANKED BIDDER.

Procurement Manager Herb Hyman explained the resolution and advised that Mr. Mucha, the owner of Bob's Towing, felt he did not need to carry Workmen's Compensation insurance as his employees were considered independent contractors. He advised that Lieutenant Ferrell of the Florida Highway Patrol would speak with reference to a previous contract issue related to Bob's Towing. Lieutenant Ferrell of the Florida Highway Patrol spoke of a 1998 arrest of Mr. Mucha with regard to fraudulent documentation.

Mr. Hyman explained that Mr. Mucha could not assign any portion of his contract without Council's permission. He stated that Mr. Mucha was in violation of this rule, by calling his employees independent contractors. Mr. Hyman advised that other towing companies in the industry did not consider their employees independent contractors as Mr. Mucha contended. He indicated that he contacted three towing companies who informed him that they carried Workmen's Compensation insurance for their employees.

Mayor Truex inquired whether not having Workmen's Compensation was legal. Mr. Hyman explained that Mr. Mucha did not meet the criteria for not carrying Workmen's Compensation. Risk Manager Dan Lutzke indicated that if Mr. Mucha had fewer than four employees, he was not required to have Workmen's Compensation.

Vice-Mayor Paul asked how the Town had been informed about the lapse in coverage by Bob's Towing. Mr. Hyman indicated that the Town had been informed by a State agency and advised that the cancellation of insurance occurred on February 7, 2003. Vice-Mayor Paul asked if there was a way to ensure that this would not occur again. Mr. Hyman spoke about his meeting and advised that Mr. Mucha had given him a copy of his liability policy. He stated that after investigation, he had learned this policy was cancelled as of July 2003.

George Maffei, attorney for Bob's Towing, explained his client's side with regard to the necessity for Workmen's Compensation. He stated that no written warnings had been submitted to Bob's Towing with regard to his contract and there were no complaints or problems with Bob's Towing performance. Mr. Maffei further stated that Mr. Mucha had given Mr. Hyman the wrong policy and advised that his insurance was with a different agency. Mr. Maffei felt it would have been better procedure to warn Mr. Mucha verbally or in writing first, instead of going forward with the current procedure.

Mr. Kiar requested further information about the new policy. Mr. Maffei indicated that he could provide copies. He explained the legal set up of Bob's Towing and explained that technically, his employees were employees of a leasing company.

Mr. Kiar advised of a lawsuit pending in small claims court against Bob's Towing. Mr. Willi asked Mr. Maffei if he was aware that Mr. Mucha had received a certified letter from the Town, in addition to a phone call, requesting that he turn in the proper insurance documentation. Mr. Maffei indicated in the negative. Mr. Willi felt it was the contract holder's responsibility to ensure that timely insurance documentation was provided to the Town.

Mr. Kiar advised that as part of the bid award documents, Mr. Mucha had indicated that he had 20 employees. He verified with Mr. Hyman that no new information had been submitted to the Town

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indicating any change in the number of employees. Mr. Kiar read Article 21 on page 11 of the contract which set forth rules related to insurance coverage.

Mr. Kiar read Article 19 of the contract. He stated that Section 20 did not pertain to lapses in insurance and added that if there was a criminal investigation, the Town could cancel the contract. Mayor Truex asked if the Town could suspend the contract subject to the criminal investigation. Mr. Kiar advised that at the conclusion of a criminal investigation, the Town reserved the right to reinstate or cancel the contract. Vice-Mayor Paul asked if the contract was suspended, would the next vendor be used. Councilmember Crowley asked if the contract was cancelled, could it be reinstated in 60 days. Mayor Truex recommended suspending the contract pending results of the criminal investigation, which would give the Town more time to look further into the insurance issue. Mr. Hyman recommended that if the contract were to be suspended, that the Town suspend for 90 days as franchise fees were paid quarterly. Vice-Mayor Paul requested that the process of insurance verification be reworked, to protect the Town from legal action and to ensure this problem did not occur again.

Mr. Maffei stated that he had not seen all the records and urged the Town inform him about the motive of the criminal investigation as it was a serious issue to suspend Mr. Mucha's contract. He advised that past letters and meetings he had had with regard to Mr. Mucha had nothing to do with insurance. Mayor Truex asked Mr. Willi if Mr. Kiar and the Police Department could review the Town's duty with regard to revealing information about the criminal investigation. Mr. Kiar recommended that Mr. Hyman contact insurance companies and request that they provide him with updated documentation.

Councilmember Hubert made a motion, seconded by Councilmember Paul, to suspend the contract and go forward with A&B Towing, subject to the conclusion of the criminal investigation being concluded or 180 days (whichever was sooner). In a roll call vote, the vote was as follows: Mayor Truex - yes; Vice-Mayor Paul - yes; Councilmember Crowley - yes; Councilmember Hubert - yes; Councilmember Starkey - yes. (Motion carried 5-0)

Councilmember Hubert indicated there was a situation in her district where she needed Council's assistance. She advised that a residential committee had requested that Council allow the use of the kitchen at the Eastside Community Hall every Friday and Saturday night without a fee, in order to raise funds to help repair Mrs. Butler's house. All approved via voice.

As there was no further business to discuss, and no objections, the meeting was adjourned at 6:40 p.m.

Approved \_\_\_\_\_

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Mayor/Councilmember

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Town Clerk